

CARMA M. POOLEY

IBLA 76-785

Decided March 30, 1977

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W 55987.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Non-competitive Leases--Oil and Gas Leases: Rentals

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

2. Applications and Entries: Generally--Applications and Entries: Filing--Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Rentals

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, her failure to do so cannot be excused because of the asserted delay of the Postal Service.

APPEARANCES: Carma M. Pooley, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Carma M. Pooley has appealed from the September 3, 1976, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer W 55987.

Appellant was the first qualified applicant drawn for oil and gas lease offer W 55987. By letter dated July 21, 1976, and received by her on July 26, 1976, she was informed that payment of the first year's rental must be received by the State Office, BLM, within 15 days of receipt of the notice. The pertinent regulation states that if appellant fails to submit the rental payment within the time allowed she will be automatically disqualified to receive the lease. 43 CFR 3112.4-1. The rental payment was due on August 10, 1976. The rental was received on August 11, 1976.

In her Statement of Reasons appellant states she mailed the rental payment on August 6, leaving 4 days for delivery. According to the Riverside, California, Postmaster the normal period of time for delivery of mail from Riverside, California, to Cheyenne, Wyoming, is 2 days.

[1] 43 CFR 3112.4-1 requires that payment be made within 15 days from date of receipt of notice, and failure to file the rental payment on time results in disqualification of the offeror. Duncan Miller, 17 IBLA 267 (1974).

[2] The Board has held that an offeror cannot be excused because of asserted delay of the Postal Service. John Paul Pratt, 24 IBLA 110 (1976); Mar-Win Development Co., 20 IBLA 383 (1975). The disqualification of appellant's offer for failure to submit the advance lease rental within the prescribed time is mandatory. John Paul Pratt, *supra*; Mar-Win Development Co., *supra*; Robert D. Nininger, 16 IBLA 200 (1974), *aff'd* Nininger v. Morton, Civ. No. 74-1246 (D.D.C., filed March 25, 1975). The rental payment qualification is automatic and the offer having next highest priority is immediately put under consideration. 43 CFR 3112.4-1. Duncan Miller, *supra*. The regulation does not allow for a grace period, as adverse parties' rights are involved. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). See 43 CFR 1821.2-2(g).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

